IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. 15799 - M of 2007
Date of Decision. March 13,2007.

Pawan Bedi .....Petitioner

Versus

Gaurav Jain ..Respondent

PRESENT Mr. Babbar Bhan, Advocate
for the petitioner.

S.S.SARON, J (Oral)

The present petition has been filed against the order dated 28.2.2007 passed by the learned Sessions Judge, Hissar whereby revision petition against the order dated 21.9.2006 passed by the learned Judicial Magistrate Ist Class, Hissar has been dismissed. By the impugned orders the application filed by the accused / petitioner under Section 311 of the Code of Criminal Procedure ('Cr. P. C' for short) for examining a handwriting expert has been declined. The examination of the expert was sought so as to show that the cheque which is subject matter of dispute is not in the handwriting of the petitioner and nor does it bear her signature.

The accused / petitioner is being proceeded against for having committing an offence under Section 138 of the Negotiable Instruments Act , 1881 ('N. I Act' for short). After the evidence of the complainant / respondent was over, the accused / petitioner produced defence evidence. In her defence she examined one handwriting expert with regard to the signature of the complainant on the General Power of Attorney executed by him. Thereafter, she has filed the application for

comparing of the signatures and her handwriting on the cheque which is the basis of the complaint filed by the respondent.

Learned counsel for the petitioner submits that the petitioner has denied her signatures as also her handwriting on the disputed cheque on the basis of which, the complaint has been filed by the respondent under Section 138 of the N. I Act. Therefore, examination of the handwriting expert is absolutely necessary for the proper adjudication of the case.

After giving my thoughtful consideration to the matter and perusing the paper book, I find no merit in the submissions made by the learned counsel for the petitioner. The learned trial Magistrate while considering the matter has observed that the complaint under Section 138 of the N. I Act was filed on 15.10.1999. Thereafter seven years have lapsed and the complaint has not been disposed of. Besides, after completion of the complainant's evidence, the statement of the accused / petitioner was recorded and she had taken the stand that the general power of attorney is forged. The complainant, it was further stated, had stolen the blank cheque in dispute as the complainant was residing in the neighbourhood. During her statement, the accused / petitioner did not take the stand that she had not signed the cheque. Rather she had taken the stand that the complainant had stolen the disputed blank cheque as he was residing in the neighbourhood. It was also noticed that the accused had already examined a handwriting expert Devender Parshad as PW1 who was examined to establish that the power of attorney which had been placed on the file by the complainant did not bear the signature of the complainant. Against the order of the learned trial Magistrate, accused / petitioner filed a revision petition before the learned Sessions Judge who again noticed that the accused / petitioner had stated that the general power of attorney was forged and that the complainant had stolen the blank

cheque in dispute as he was residing in the neighbourhood. The accused in her statement did not state that the cheque had not been signed by her. It was also noticed that the accused / petitioner had already examined a handwriting expert.

In the afore-noted circumstances, it cannot be said that there is any infirmity in the orders passed by the learned Courts below. The Court in terms of Section 311 Cr. P. C though can exercise its powers to summon any person as a witness or recall or re-examine a witness already examined, however,the power is to be exercised if the examination of the witness is essential for the just decision of the case. The provisions of Section 311 Cr. P. C is intended to enable the Court to get at the truth and reach a proper conclusion in the matter under inquiry or trial. In the present case the petitioner herself in her defence has not taken the stand that the disputed cheque is not in her handwriting or that it was not signed by her, therefore, the examination of the handwriting expert that has been sought is not at all necessary for the just decision of the case. In circumstances I find no ground to interfere with the order dated 28.2.2007 passed by the learned Addl. Sessions Judge, Hissar and that of the learned trial Magistrate dated 21.9.2006.

Consequently, the revision petition is dismissed.

March 13 , 2007 **(S.S.SARON)**
mamta **JUDGE**